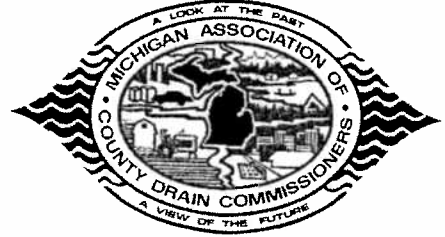


Memorandum



DATE: March 17, 2009
TO: Great Lakes and Environment Committee
FROM: Michigan Association of County Drain Commissioners (MACDC)
RE: Wetlands Protection Program

The Michigan Association of County Drain Commissioners (MACDC) is a non-profit organization dedicated to the protection of the health, safety, and welfare of Michigan's citizens, their lands and environmental quality, and to the protection and restoration of Michigan's water resources. MACDC's stormwater and water resource management professionals include Michigan's County Drain Commissioners and 194 member companies throughout the State in construction, contracting, engineering, legal, financial, and manufacturing supply. Thousands of people employed in Michigan are associated with the work of County Drain Commissioners building and maintaining the vital drainage infrastructure necessary for Michigan's economy and the quality of life of its citizens.

The work of MACDC's members in the surface waters of the State are at times regulated under many of Michigan's environmental statutes, including Part 303, Wetlands Protection, 1994 PA 451. Our members are therefore among the many regulated communities affected directly by how well these statutory programs work or don't work. However, our members also serve important oversight roles in surface waters as we perform our statutory responsibilities, which gives us a unique perspective and first hand experience with the important role wetlands play not only in flood and storm water control, but also in pollution treatment, soil erosion & sedimentation control, and water quality.

Michigan has a vital interest in assuring the protection of our fresh water resources. Our State lies in the middle of the Great Lakes which contain 20% of the world's available fresh water. The value of this resource represents billions of dollars in economic development opportunities and quality of life for Michigan's citizens. Wetlands play a critical role in protecting this. Indeed, such concerns were among the reasons three decades ago when this State enacted one of the first and most comprehensive statewide wetland protection statutes in not only the Great Lakes basin

but also in the nation. It is as true today as it was then, "If not protected here, then where?" **Therefore, MACDC believes there is value in retaining the Michigan wetland protection program and that there exists an opportunity to restructure the program to be more efficient and consistently serve the citizens and resources of our State.**

While the value of Michigan's wetland protection program will be articulated by many other organizations and concerned citizen groups, MACDC would like to offer some additional reasons from our perspective as water management professionals for retaining the State wetland program:

1. **Increased timeliness for regulated communities.** The work that MACDC's members perform deals with the public health, safety and welfare. Timeliness is a key component for our public drainage projects in addressing public needs. Based on the experience of other States under the 404 program, wetland permitting for certain projects will take considerably longer due to a lack of Federal statutory timeframe requirements, case backlogs, and jurisdictional confusion under the new Federal guidelines and court cases. All permitting delays, regardless of the reason, will result in added public project costs which means added taxpayer costs. Moreover, delays slow the construction of infrastructure needed to relieve damaging flooding for Michigan's businesses and residents and needed to facilitate vital economic growth.
2. **Increased efficiency in permit issuance for regulated communities.** Retaining the State program gives the regulated communities like MACDC's members working in the waters of the State a one-stop shopping approach under the State's joint application process. Wetlands, floodplains, and inland lakes and streams are all simultaneously reviewed and permitted under this approach which eliminates multiple agencies and potentially conflicting permit decisions. If the wetlands program is eliminated, the regulated community will still need to apply to the MDEQ for floodplains and inland lakes and streams but will have to add a new layer of governmental permitting for wetlands. As a result, decisions can become disjointed and the process much more cumbersome.
3. **Better retention of vital wetland functions such as flood protection and water quality with improved State protection.** Losing the wetland program in Michigan likely will result in a decrease in wetlands under regulation, particularly small and isolated wetlands, with some estimates as high as nearly a million acres of wetland. Wetlands can be an important tool in the control of flooding by adding hydrologic adsorption and storage capacity. Simply put, wetlands act like sponges, important during storm events. Other vital wetland functions that would be costly to lose include nutrient and pollutant removal for water quality. MACDC recognizes the importance of wetlands for both flood control and filtration and support the effective management of this resource.
4. **Better coordination of the wetland program with State and local interests and other statutory requirements.** The State program provides an agency staff familiar with local resources and conveniently available to the regulated communities. Staff is distributed in Districts, more accessible for on-site and

other meetings. Furthermore, the current system provides for easier access and better notice for citizen involvement. As public officials, MACDC's Drain Commissioner members are committed to providing for the inclusion of the public as we work to serve the public's needs.

5. **State oversight of wetlands provides a role for local governments in their permitting process.** Drain Commissioners and local units of government are noticed of permit applications and given the opportunity to be involved in the process with comments when wetlands are affected within their jurisdictional areas. Local governments often take advantage of this opportunity for comment as opposed to adopting their own local ordinances. Drain Commissioners have used this opportunity to submit information on drainage or flooding issues to the State. In providing a process for local involvement, we believe the public's interests are better served. Moreover, the State program has provided valuable wetland mapping and other services for local decision makers.
6. **State program is understood by the regulated community and under control of our legislature.** Most of the regulated communities currently only deal with the State of Michigan and a process that is familiar. There is no way to predict, other than the experience other states have had, what will lie ahead for Michigan's regulated communities, including individual citizens, if the program goes to the Federal government. **MDEQ must improve the administration and consistency of the Wetlands Program and more regularly communicate with stakeholders.** The interpretation and enforcement of part 303 has been long-debated and the basis of conflict between the MDEQ and Drain Commissioners. The 2008 agreement between MDEQ and the E.P.A. to remove exemptions from part 303 for drain projects without meaningful discussions with Drain Commissioners further demonstrates an MDEQ's past failure to work cooperatively on behalf of the resource. A commitment to meaningful change in the approach to administering the wetlands program is essential to having a viable State program for the future.

In closing, MACDC believes the elimination of Michigan's wetland protection program and the proposed legislation that would amend Part 303 may be harmful to the wetland resources of our State and potentially negatively impact the permitting process. While we recognize that these are difficult budgetary times, and that tough choices must be made, eliminating all general fund support of this program reflects an unacceptable abandonment of an environmental component of our overall State priorities. The People of Michigan would find this unacceptable. Very careful and thoughtful debate should be done for reasons beyond just budget. There is no doubt that there are reforms that are needed within the State program so that it is more sensitive to the needs of the regulated communities and more efficient and effective in achieving statutory goals, however, the need for reform, is an opportunity, not a good reason to eliminate the program not when the alternative could be far worse for Michigan.

MACDC would instead encourage the Legislature to use the current fiscal constraints as an opportunity to redefine and restructure this water resource

program so important for both the economy and environment of Michigan. Those who are stakeholders in this issue, including the regulated communities like MACDC, could greatly assist the Legislature and the Michigan Department of Environmental Quality (MDEQ) in improving program efficiency and cost-effectiveness while still maintaining Michigan's 30-year commitment to protecting wetland resources. We would therefore strongly encourage the Legislature to not act in haste. Instead, MACDC would encourage the establishment of a work group similar to what was done in 2000 with Part 91 and the Soil Erosion and Sedimentation Control program when that statute, and the MDEQ program administering it, were carefully reviewed and revised to improve both program efficiency for users and statutory effectiveness for protecting the resource.

MACDC has appreciated the opportunity to give input on this matter that is so vital for both its members and for the Michigan citizens our members serve. We look forward to following this issue as it is further considered by the State legislature.